

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES WILLIAM OTTER

Appeal 2007-3075
Application 09/927,274
Technology Center 3700

Decided: November 16, 2007

Before BRADLEY R. GARRIS, CATHERINE Q. TIMM, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-5, 21, and 22. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellant claims a method for making a heat exchanger comprising the steps of applying a layer of oxidizable material on an inner surface and an opposing outer surface of the heat exchanger and oxidizing the layers of oxidizable material to thereby obtain dark material having a high emissivity.

Representative claim 1 reads as follows:

1. A method for making a heat exchanger of a furnace system comprising the steps of :

applying a layer of an oxidizable material on an inner surface and an opposing outer surface of said heat exchanger; and

oxidizing said layers of oxidizable material to form a layer of dark material having a high emissivity on each of said inner surface and said outer surface.

The references set forth below are relied upon by the Examiner as evidence of obviousness:

Clingan	2,394,899	Feb. 12, 1946
Smith	3,305,011	Feb. 21, 1967
Thery	4,850,713	Jul. 25, 1989

All appealed claims are rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith (which incorporates Clingan) in view of Thery.

The Examiner finds that Smith (col. 7, ll. 39-43) discloses applying a high emissivity coating on both sides of the radiator (i.e., heat exchanger) and that the aforementioned both sides corresponds to the inner surface and opposing outer surface features of independent claim 1 (Ans. 4-6; Suppl.

Ans. 5-6). According to Appellant, "[n]either Smith nor Thery disclose [sic] the step of applying a layer of oxidizable material to both the inner and outer surface of a radiator," and therefore "the combination [of Smith and Thery] would not disclose or suggest applying oxidizable material on both the inner and outer surfaces of a heat exchanger" (Br. 4).

The dispositive issue for the rejection of claim 1 is whether Appellant has established that the Examiner's above-noted findings are erroneous.

These findings by the Examiner are correct, and we adopt them as our own. As fully explained by the Examiner in the Answer and Supplemental Answer, Smith teaches applying a coating on both sides of the radiator or heat exchanger. As a result, the lower surface coating (Figs. 5-6) would face inwardly toward combustion units 30 of heating unit 22 (Fig. 1) whereas the opposing upper surface coating (Figs. 5-6) would face outwardly toward the environment external of heating unit 22 (Fig. 1). Viewed in this way, an artisan would consider Smith's lower surface coating to be on an inner (i.e., inwardly facing) surface and the opposing upper surface coating to be on an outer (i.e., outwardly facing) surface.

Moreover, an artisan would interpret the inner and outer surfaces of claim 1 as encompassing the above discussed surfaces of Smith. This is because Appellant's Specification expressly describes the outer surface 30 of the heat exchanger shown in Figure 5 as being "exposed to the environment" (Spec. 5, para. 26). Therefore, the aforementioned interpretation is reasonable and consistent with the Specification disclosure. *See In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

The Brief on appeal proffers no reasonably specific support for the Appellant's disagreement with the Examiner's findings of fact.

Under these circumstances, Appellant has failed to establish that the Examiner's findings concerning the rejection of claim 1 are erroneous.

Appellant also argues that Smith and Thery contain no teaching or suggestion of the features recited in dependent claims 3, 21, and 22. The Examiner's obviousness conclusion regarding these claims is based on previously-taken Official Notice that the features recited in these claims were known in the prior art (Ans. 4-5). For this reason and because the Examiner's Official Notice has not been challenged by Appellant with any reasonable specificity, the argument under consideration fails to establish that the Examiner has erred in rejecting claims 3, 21, and 22.

In light of the foregoing, we hereby sustain the § 103 rejection of all appealed claims as being unpatentable over Smith in view Thery.

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(vi).

AFFIRMED

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